

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  DAVID TROUPE,

12                  Plaintiff,

13                  v.

14                  WILLIAM SWAIN, et al.,

15                  Defendant.

16                  CASE NO. 16-5380 RJB-DWC

17                  ORDER ADOPTING REPORT  
18                  AND RECOMMENDATION

19         This matter comes before the Court on the Report and Recommendation of U.S.

20         Magistrate Judge David W. Christel. Dkt. 92. The Court has considered the Report and

21         Recommendation, objections, if any, and the remaining record.

22         The facts are in the Report and Recommendation (Dkt. 92, at 1-6) and are adopted here.

23         The Report and Recommendation recommends that all Plaintiff's claims against all remaining

24         Defendants be summarily dismissed. Dkt. 92.

25         The Report and Recommendation (Dkt. 92) should be adopted. Plaintiff failed to  
26         demonstrate that there are issues of fact as to whether Defendants' placement of Plaintiff in a  
27         restraint bed for twelve hours one night after he indicated he had a razor blade and referenced

1 suicide: (1) constituted excessive force, (2) demonstrated deliberate indifference to a serious risk  
2 to Plaintiff's health or safety, or (3) was in retaliation for Plaintiff's filing of grievances. As  
3 provided in the Report and Recommendation, the Defendants are entitled to a judgment as a  
4 matter of law, and this case should be dismissed.

5        Further, as recommended in the Report and Recommendation, this case should be  
6 summarily dismissed because the case is malicious and frivolous. The dismissal should be  
7 counted as a strike pursuant to 28 U.S.C. § 1915(g). The Report and Recommendation (Dkt. 92)  
8 should be adopted.

## ORDER

Accordingly, it is **ORDERED** that:

- The Report and Recommendation (Dkt. 92) **IS ADOPTED**;
    - Defendants' Motion for Summary Judgment (Dkt. 74) **IS GRANTED**;
    - All claims against the remaining Defendants **ARE DISMISSED** **PREJUDICE**;
    - This case is **DISMISSED** as malicious and frivolous. The dismissal is a **STRIKE** pursuant to 28 U.S.C. § 1915(g).

17 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge  
18 Christel, all counsel of record, and to any party appearing *pro se* at said party's last known  
19 address.

Dated this 5<sup>th</sup> day of June, 2017.

Robert J. Bryan

**ROBERT J. BRYAN**  
United States District Judge